

MARKET CONDUCT EXAMINATION REPORT
AS OF DECEMBER 31, 2002

American Compensation Insurance Company
8500 Normandale Lake Boulevard, Suite 1400
Bloomington, Minnesota 55437

NAIC Company Code 45934

EXAMINATION PERFORMED BY
INDEPENDENT CONTRACTORS
FOR
COLORADO DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF INSURANCE

November 22, 2004

The Honorable Doug Dean
Commissioner of Insurance
State of Colorado
1560 Broadway, Suite 850
Denver, Colorado 80202

Commissioner:

In accordance with Sections 10-1-203 and 10-3-1106, C.R.S., an examination of selected underwriting, auditing and unit statistical card practices of the workers' compensation insurance business of American Compensation Insurance Company, hereinafter referred to as the "Company", has been conducted. The Company's records were examined at its home office located at 8500 Normandale Lake Boulevard, Suite 1400, Bloomington, Minnesota 55437.

The examination covered the period from January 1, 2002 to December 31, 2002.

The following market conduct examiners respectfully submit the results of this examination:

Lucille E. Whittle, CIE

K. C. Lang, AIE

**MARKET CONDUCT
EXAMINATION REPORT
OF
AMERICAN COMPENSATION INSURANCE COMPANY**

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COMPANY PROFILE

The Company is a stock company, incorporated in 1992 under the laws of Minnesota as a wholly owned subsidiary of TRW, Inc. The Company was licensed to do business in Colorado on November 30, 1994, and began writing business in this State in January of 1995. All policy administration, underwriting functions and claims handling is done by the Company's administrator, RTW Colorado, Inc. This administrator handles only business for the Company and the Company writes only workers' compensation insurance. The Company's business is produced through independent agents.

The Company is licensed to do business in the following states: Arkansas, Colorado, Connecticut, Florida, Iowa, Illinois, Indiana, Kansas, Massachusetts, Maryland, Michigan, Minnesota, Missouri, Pennsylvania, Rhode Island, South Dakota, Tennessee and Wisconsin. It has branch offices in Minnesota, Colorado and Michigan. The Company has closed its branch offices in Missouri and Massachusetts since it was last examined by the State of Colorado in 1999.

Based on figures supplied by the Colorado Division of Insurance's Industry Statistical Report, the Company reported direct written premium in Colorado for the calendar year 2002 of \$10,555,000, which represents a 1.17% market share for workers' compensation insurance.

PURPOSE AND SCOPE OF EXAMINATION

This market conduct report was prepared by independent examiners contracting with the Colorado Division of Insurance for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This examination is in accordance with Colorado Insurance Law Section 10-1-204, C.R.S., which empowers the Commissioner to supplement his resources to conduct market conduct examinations. The findings in this report, including all work product developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The purpose of this examination was to determine the Company's compliance with Colorado insurance laws and with generally accepted operating principles related to workers' compensation insurance. Examination information contained in this report should serve only those purposes. The conclusions and findings of this examination report are public record. The preceding statements are not intended to limit or restrict the distribution of this report.

This examination was governed by, and performed in accordance with, procedures developed by the National Association of Insurance Commissioners, the Colorado Division of Insurance and the Insurance Regulatory Examiners Society. In reviewing material for this report, the examiners relied primarily on records and materials maintained by the Company. The examination period covered one year of the Company's operations, from January 1, 2002 to December 31, 2002.

File sampling was based on a review of audited policies, with accompanying claims, and claims for policies with large and small deductibles. Samples were systematically selected by using ACLTM software and computer data files provided by the Company. Sample sizes were chosen based on procedures developed by the National Association of Insurance Commissioners. Upon review of each sampled policy and claim, any concerns or discrepancies were noted on comment forms and these comment forms were delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond. For each finding the Company was requested to agree or disagree and justify the Company's noted action. At the conclusion of the examination, the Company was provided a summary of the findings for each sample. The report of the examination is, in general, a report by exception. Therefore, much of the material reviewed will not be contained in this written report as references to any practices, procedures, or files manifesting no errors were omitted.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero (\$0) tolerance level was applied in order to identify possible system errors. Additionally a zero (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines. When sampling was involved, a minimum error tolerance level of five percent (5%) was established to determine reportable exceptions. However, if an issue appeared to be systemic, or when due to the sampling process it was not feasible to establish an exception percentage, a minimum error tolerance percentage was not utilized. Also, if more than one sample was reviewed in a particular area of the examination (e.g. timeliness of claims payment), and if one or more of the samples yielded an exception rate of five percent (5%) or more, the results of any other samples with exception percentages less than five percent (5%) were also included.

This report contains information regarding exceptions to Colorado insurance laws. The examination included review of the following three (3) Company operations:

1. Company Operations/Management
2. Underwriting and Rating
3. Unit Statistical Card Reporting

All unacceptable or non-complying practices may not have been discovered during the course of this examination. Additionally, findings may not be material to all areas that would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance of such practices. This report should not be construed to endorse or discredit any insurance company or insurance product. Statutory cites and regulation references are as of the period under examination unless otherwise noted. Examination report recommendations not referencing specific insurance laws and/or regulations may be presented to encourage improvement in Company practices and operations and ensure consumer protection. Examination findings may result in administrative action by the Division of Insurance.

EXAMINERS' METHODOLOGY

The examiners reviewed the Company's Workers' Compensation underwriting and unit statistical card reporting practices to determine compliance with Colorado insurance law as outlined in Exhibit 1.

Exhibit 1

Law	Subject
Section 10-3-1103	Unfair methods of competition and unfair or deceptive acts or practices prohibited.
Section 10-3-1104	Unfair methods of competition and unfair or deceptive acts or practices.
Section 10-4-110	Notice of intent prior to nonrenewal of certain policies of insurance.
Section 10-4-110.5	Notice of intent prior to unilateral increase in premium or decrease in coverage previously provided of certain policies of insurance.
Section 10-4-113	Exemptions.
Section 10-4-401	Purpose – applicability.
Section 10-4-413	Records required to be maintained.
Section 10-4-416	Prohibiting changes in rates or coverages.
Section 10-4-421	Notice of rate increases and decreases.
Regulation 1-1-7	Market Conduct Record Retention
Regulation 1-1-8	Penalties And Timelines Concerning Division Inquiries And Document Requests.
Regulation 5-1-11	Risk Modification Plans
Regulation 5-3-1	Workers' Compensation Risk Management Regulation
Regulation 5-3-2	Workers' Compensation Insurance Data Reporting Regulation
Regulation 5-3-3	Concerning Workers' Compensation Deductible Policies in Excess of \$5,000
Regulation 5-3-4	Concerning Standards for Not-At-Fault Motor Vehicle Accidents Under Workers' Compensation, Loss Limitation in Calculating Experience Modifications and Distribution of Losses in Excess of The Loss Limitation
Regulation 5-3-5	Workers' Compensation Deductible Reimbursement

Company Operations/Management

The examiners reviewed Company implementation and quality controls, record retention, and timely cooperation with the examination process.

Contract Forms and Endorsements

Forms and endorsements used by the Company in writing Workers' Compensation policies containing Colorado exposures are those filed with the Colorado Division of Insurance by the National Council on Compensation Insurance (NCCI) and no review of these forms was made.

Audited Policies

For the period under examination, the examiners systematically selected the following underwriting samples to determine compliance with underwriting and rating requirements:

Review Lists	Population	Sample Size	Percentage to Population
Audited Policies with Experience Modifiers	151	50	33%
Audited Policies without Experience Modifiers	37	37	100%

Underwriting and Rating

The examiners reviewed the rate and rule filings, statistical justifications, and methodology submitted to the Colorado Division of Insurance for the period under examination. This information was then compared against samples of audited policies with experience modifiers and audited policies without experience modifiers to determine compliance with NCCI loss costs, filed loss costs modifiers, audited payroll information, experience modifiers, schedule rating, officer and sole proprietor payrolls, and Colorado cost containment and designated medical provider requirements.

Unit Statistical Card Reporting

For the period under examination, the examiners systematically selected the following samples of claims from audited policies with experience modifiers and from policies with large and small deductibles to determine compliance with NCCI unit statistical card reporting requirements:

Review Lists	Population	Sample Size	Percentage to Population
Claims from Audited Policies with Experience Modifiers	343	203	59%
Additional Claims from Policies with Large and Small Deductibles	458	440	96%

EXAMINATION REPORT SUMMARY

The examination resulted in a total of seven (7) issues arising from the Company's apparent failure to comply with Colorado insurance laws that govern all property and casualty insurers operating in the State of Colorado. These issues involved the following Company operations:

Company Operations/Management

In the area of Company operations/management, one (1) compliance issue is addressed in this report. This issue arises from Colorado statutory and regulatory requirements that must be followed when writing Colorado workers' compensation policies. In regard to this one (1) practice, it is recommended that the Company review its record retention procedures and make the necessary changes to ensure future compliance with applicable Colorado insurance laws.

The compliance issue addressed in this phase is as follows:

- Failure of the Company, in some cases, to maintain records required when writing Colorado workers' compensation policies.

Underwriting and Rating

In the area of underwriting and rating, five (5) compliance issues are addressed in this report. These issues arise from Colorado statutory and regulatory requirements that must be followed when writing Colorado workers' compensation policies. In regard to these five (5) underwriting and rating practices, it is recommended that the Company review its underwriting and rating procedures and make the necessary changes to ensure future compliance with applicable Colorado insurance laws.

The five (5) compliance issues addressed in this phase are as follows:

- Failure of the Company, in some cases, to require insured business entities to indicate on a form their awareness of the premium dividend available if their risk management program is certified by the Colorado Cost Containment Board and to make this form part of the insured business entities' underwriting files.
- Failure of the Company, in some cases, to require each insured to indicate on a form their awareness of the premium differential available when an insured selects a designated medical provider and to retain this form in the insured's underwriting file.
- Failure of the Company, in some cases, to use experience modification factors promulgated by NCCI when writing Colorado workers' compensation policies.
- Failure of the Company, in some cases, to apply the correct rating methodology when rating Colorado workers' compensation policies.
- Failure of the Company, in some cases, to apply its required underwriting criteria to all Colorado workers' compensation policies.

Unit Statistical Card Reporting

In the area of unit statistical card reporting, one (1) compliance issue is addressed in this report. This issue arises from Colorado statutory and regulatory requirements that must be followed when writing Colorado workers' compensation policies. In regard to this one (1) unit statistical card reporting practice, it is recommended that the Company review its unit statistical card reporting procedures and make the necessary changes to ensure future compliance with applicable Colorado insurance laws.

The one (1) compliance issue addressed in this phase is as follows:

- Failure of the Company, in some cases, to correctly report unit statistical card information to NCCI when writing Colorado workers' compensation policies.

A copy of the Company's response, if applicable, can be obtained by contacting the Company or the Colorado Division of Insurance.

Results of any previous Market Conduct Examinations are available on the Colorado Division of Insurance's website at www.dora.state.co.us/insurance or by contacting the Colorado Division of Insurance.

MARKET CONDUCT EXAMINATION REPORT

PERTINENT FACTUAL FINDINGS

AMERICAN COMPENSATION INSURANCE COMPANY

OPERATIONS/MANAGEMENT
FINDINGS

Issue A: Failure of the Company, in some cases, to maintain records required when writing Colorado workers' compensation policies.

Section 10-4-413, C.R.S., Records required to be maintained, states in part:

(1) Every insurer...shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members and of the data, statistics, or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys, or inspections made or used by it, so that such records will be available at all reasonable times to enable the commissioner to determine whether such organization, insurer, group, or association and, in the case of an insurer or rating organization, every rate, rating plan, and rating system made or used by it complies with the provisions of this part 4 applicable to it...Such records shall be maintained in an office within this state or shall be made available for examination or inspection by the commissioner at any time, upon reasonable notice.

Colorado Regulation 1-1-7, Market Conduct Record Retention, promulgated under the authority of Section 10-1-109, C.R.S., states, in part:

(B) RECORDS REQUIRED FOR MARKET CONDUCT PURPOSES

1. Every insurer/carrier or related entity licensed to do business in this state shall maintain its books, records, documents and other business records so that the insurer's/carrier's or related entity's claims, rating, underwriting, marketing, complaint, and producer licensing records are readily available to the Commissioner. Unless otherwise stated within this regulation, records shall be maintained for the current calendar year plus two calendar years.
2. A policy record shall be maintained for each policy issued in this state. Policy records shall be maintained for the current policy term, plus two calendar years, unless otherwise contractually required to be retained for a longer period. Provided, however, documents from policy records no longer required to be maintained under this regulation, which are used to rate or underwrite a current policy, must be maintained in the current policy records. Policy records shall be maintained so as to show clearly the policy term, basis for rating and, if terminated, return premium amounts, if any. Policy records need not be segregated from the policy records of other states so long as they are readily available to the commissioner as required under this rule. A separate copy need not be maintained in the individual policy records, provided that any data relating to that policy can be retrieved. Policy records shall include:
 - a. The application for each policy, if any;
 - b. Declaration pages, endorsements, riders, termination notices, guidelines or manuals associated with or used for the rating or underwriting of the policy. Binder(s) shall be retained if a policy was not issued; and

c. Other information necessary for reconstruction of the rating and underwriting of the policy.

Reference is also made to Section 8-41-202, C.R.S., Rejection of coverage by corporate officers and others, which states in part:

(1) Notwithstanding any provision of article 40 to 47 of this title to the contrary, a corporate officer of a corporation or a member of a limited liability company may elect to reject the provisions of articles 40 to 47 of this title. If so elected, said corporate officer or member shall provide written notice on a form approved by the division through a rule promulgated by the director of such election to the workers' compensation insurer of the employing corporation or company, if any, by certified mail. If there is no worker's compensation insurance company, the notice should be provided to the division by certified mail. Such notice shall become effective the day following the receipt of said notice by the insurer or the division.

(2) A corporate officer's or member's election to reject the provisions of articles 40 to 47 of this title shall continue in effect so long as the corporation's or company's insurance policy is in effect or until said officer or member, by written notice to the insurer, revokes the election to reject said provisions.

NCCI Basic Manual Rule IX.A. Executive Officers, states in part:

“3. Exclusions

In the states listed below, an executive officer may elect not to be subject to the law.”

Colorado is listed as a state in which officers may be excluded.

Colorado Regulation 5-1-11, Risk Modification Plans, promulgated under the authority of Section 10-1-109, 10-4-401, 10-4-403, 10-4-404, and 10-4-408, C.R.S., states, in part:

III. RULES

A. Definitions...

13. "Rate modification plan" (commonly called Schedule Rating Plan or Individual Risk Premium Modification Plan) means a rating plan or procedure which provides a listing of various risk characteristics or conditions and a range of modification factors which may be applied for these characteristics or conditions to the manual rate of a particular insurance risk...

B. Rate Modification Plans

Rate modification plans, justified according to the standards herein, are permitted. However, the Commissioner has determined that the use of unjustified rate modification plans is not reasonable, is not objective and is unfairly discriminatory. Therefore, the use of unjustified rate modification plans in rating of commercial property and casualty insurance risks located in Colorado is prohibited...

The following elements shall be considered in determining whether or not a rate modification plan, or its use, is justified:

1. Rate modification plans must be used to acknowledge variance in risk characteristics and not merely to gain competitive advantage.
2. Rate modification plans must be based only on rating characteristics not already reflected in the manual rates. The plans must clearly indicate the objective criteria to be used...
4. Individual underwriting files must contain the specific criteria and document the particular circumstances of the risk that support each debit or credit. This documentation must exist in the individually rated risk or underwriting file to enable the commissioner to verify compliance with this regulation. Documentation may include, but is not limited to, inspection reports, photographs, agent observations and findings, insured's formal safety plans, premises evaluations, and narrative reports covering other aspects of the risk. For the purpose of workers' compensation insurance, documentation must include a copy of the employer's Colorado Cost Containment Certificate if a premium dividend is allowed. Misclassification of a risk will be considered a modification without justification...

The following charts illustrate the significance of errors versus the populations and samples examined:

**WORKERS' COMPENSATION POLICIES WITH EXPERIENCE MODIFIERS
WRITTEN JANUARY 1, 2002 TO DECEMBER 31, 2002**

Population	Sample Size	Number of Exceptions	Percentage to Sample
151	50	43	86%

An examination of fifty (50) policies, representing 33% of all workers' compensation audited policies with experience modifiers, written by the Company during the period January 1, 2002 to December 31, 2002, showed forty-three (43) exceptions (or 86% of the sample), and sixty-four (64) instances in which policy files did not contain required documentation. Forty-one (41) files did not contain a breakdown and/or justification for the schedule credit or debit applied to the policy. Fourteen (14) files did not contain signed officer exclusion forms. The Company was unable to provide proof that three (3) insureds had a designated medical provider even though a credit for having one had been applied to the insureds' policies. Three (3) insureds had been given a cost containment credit but there was no Cost Containment Certificate in these insureds' files. One (1) insured had been given a cost containment credit but the cost containment certificate found in the file had expired and no current certificate could be found. One (1) policy had an officer exclusion endorsement attached; however, the excluded officers' names were not shown on the endorsement. One (1) insured had disputed an audit but the Company was unable to provide the insured's dispute letter in order for the examiners to verify that the changes made were correct.

WORKERS' COMPENSATION POLICIES WITHOUT EXPERIENCE MODIFIERS
WRITTEN JANUARY 1, 2002 TO DECEMBER 31, 2002

Population	Sample Size	Number of Exceptions	Percentage to Sample
37	37	29	78%

An examination of thirty-seven (37) policies, representing 100% of all workers' compensation audited policies without experience modifiers, written by the Company during the period January 1, 2002 to December 31, 2002, showed twenty-nine (29) exceptions (or 78% of the sample), and thirty-one (31) instances in which policy files did not contain required documentation. Twenty-eight (28) files did not contain a breakdown and/or justification for the schedule credit or debit applied to the policy. Three (3) files did not contain acceptable signed officer exclusions forms.

Recommendation #1

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-4-413, C.R.S., and Colorado Regulations 1-1-7 and 5-1-11. If the Company is unable to provide such documentation, it should be required to provide written evidence to the Colorado Division of Insurance that it will maintain required records when writing Colorado workers' compensation policies in compliance with Colorado insurance laws.

UNDERWRITING AND RATING
FINDINGS

Issue B: Failure of the Company, in some cases, to require insured business entities to indicate on a form their awareness of the premium dividend available if their risk management program is certified by the Colorado Cost Containment Board and to make this form part of the insured business entities' underwriting files.

Colorado Regulation 5-1-11, Risk Modification Plans, promulgated pursuant to the authority of Section 10-1-109, 10-4-401, 10-4-403, 10-4-404, and 10-4-408, C.R.S., states, in part:

(III) RULES...

(D) Workers' Compensation Cost Containment Disclosures

All workers' compensation insurers, including the Colorado Compensation Insurance Authority, shall disclose the availability of cost containment certification by the Colorado Workers' Compensation Cost Containment Board and the potential premium savings on the face of the insurance policy or in a separate disclosure form attached as an addendum to the policy. Such disclosure applies regardless of whether or not a risk is experience or schedule rated. *Insurers shall require that the insured business entity indicate, on a form developed by the insurer, which states that the business entity is aware of the premium dividend if the business entity's risk management program is certified by the Colorado Cost Containment Board. This form shall be made part of the insured business entity's underwriting file.* (Emphases added.)

The following charts illustrate the significance of errors versus the populations and samples examined:

**WORKERS' COMPENSATION POLICIES WITH EXPERIENCE MODIFIERS
WRITTEN JANUARY 1, 2002 TO DECEMBER 31, 2002**

Population	Sample Size	Number of Exceptions	Percentage to Sample
151	50	41	82%

An examination of fifty (50) policies, representing 33% of all workers' compensation audited policies with experience modifiers, written by the Company during the period January 1, 2002 to December 31, 2002, showed forty-one (41) exceptions (or 82% of the sample) where no form on which the insured had indicated its awareness of the possible premium dividend available if the insured's risk management program is certified by the Colorado Workers' Compensation Cost Containment Board was found in the insured's underwriting file. These potential savings are usually expressed as percentages.

The required cost containment endorsement had been attached to all fifty (50) policies examined. The nine (9) policies that had cost containment credits but no forms in the file indicating the insureds' awareness of the potential savings were not included in the errors since it was obvious that these insureds were aware of the savings.

**WORKERS' COMPENSATION POLICIES WITHOUT EXPERIENCE MODIFIERS
WRITTEN JANUARY 1, 2002 TO DECEMBER 31, 2002**

Population	Sample Size	Number of Exceptions	Percentage to Sample
37	37	37	100%

An examination of thirty-seven (37) policies, representing 100% of all workers' compensation audited policies without experience modifiers, written by the Company during the period January 1, 2002 to December 31, 2002, showed thirty-seven (37) exceptions (or 100% of the sample) where no form on which the insured had indicated its awareness of the possible premium dividend available if the insured's risk management program is certified by the Colorado Workers' Compensation Cost Containment Board was found in the insured's underwriting file. These potential savings are usually expressed as percentages.

Recommendation #2

Within thirty (30) days, the Company should be required to provide documentation demonstrating why it should not be considered in violation of Colorado Regulation 5-1-11. In the event the Company is unable to provide such documentation, it should be required to provide written procedures to the Colorado Division of Insurance which will ensure that it will retain a copy of the form on which the insured has indicated its awareness of the premium dividend available for this program in the insured's underwriting file in compliance with Colorado insurance laws.

Issue C: Failure of the Company, in some cases, to require each insured to indicate on a form their awareness of the premium differential available when an insured selects a designated medical provider and to retain this form in the insured's underwriting file.

Colorado Regulation 5-1-11, Risk Modification Plans, promulgated pursuant to the authority of Section 10-1-109, 10-4-401, 10-4-403, 10-4-404, and 10-4-408, C.R.S., states, in part:

(III) RULES...

(D)...On an annual basis, all workers' compensation insurers, including the Colorado Compensation Insurance Authority, shall disclose the premium differential on the face of the insurance policy or in a separate disclosure form attached as an addendum to the policy when the policyholder has selected a designated medical provider. Such disclosure applies regardless of whether a risk is experience rated or schedule rated. *Insurers shall require that the insured business entity indicate, on a form developed by the insurer, which states that the business entity is aware of the premium differential for selecting a designated medical provider. This form shall be made part of the insured business entity's underwriting file.* (Emphases added.)

The following charts illustrate the significance of errors versus the populations and samples examined:

**WORKERS' COMPENSATION POLICIES WITH EXPERIENCE MODIFIERS
WRITTEN JANUARY 1, 2002 TO DECEMBER 31, 2002**

Population	Sample Size	Number of Exceptions	Percentage to Sample
151	50	3	6%

An examination of fifty (50) policies, representing 33% of all workers' compensation audited policies with experience modifiers, written by the Company during the period January 1, 2002 to December 31, 2002, showed three (3) exceptions (or 6% of the sample) in which no form on which insureds had indicated awareness of the premium differential given if it selected a designated medical provider was found in the insureds' underwriting files. This premium differential is generally expressed as a percentage.

**WORKERS' COMPENSATION POLICIES WITHOUT EXPERIENCE MODIFIERS –
WRITTEN JANUARY 1, 2002 TO DECEMBER 31, 2002**

Population	Sample Size	Number of Exceptions	Percentage to Sample
37	37	8	22%

An examination of thirty-seven (37) policies, representing 100% of all workers' compensation audited policies without experience modifiers, written by the Company during the period January 1, 2002 to December 31, 2002, showed eight (8) exceptions (or 22% of the sample) in which no form on which the

insureds had indicated awareness of the premium differential given if it selected a designated medical provider was found in the insureds' underwriting files. This premium differential is generally expressed as a percentage.

Recommendation #3

Within thirty (30) days, the Company should be required to provide documentation demonstrating why it should not be considered in violation of Colorado Regulation 5-1-11. In the event the Company is unable to provide such documentation, it should be required to provide written procedures to the Colorado Division of Insurance which will ensure that the Company will retain a copy of the form on which the insured has indicated its awareness of the premium differential available if it selects a designated medical provider in the insured's underwriting file in compliance with Colorado insurance laws.

Issue D: Failure of the Company, in some cases, to use experience modification factors promulgated by NCCI when writing Colorado workers' compensation policies.

Section 10-4-413, C.R.S., Records required to be maintained, states, in part:

(1) Every insurer, rating organization, or advisory organization and every group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members and of the data, statistics, or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys or inspections made or used by it, so that such records will be available at all reasonable times to enable the commissioner to determine whether such organization, insurer, group, or association and, in the case of an insurer or rating organization, every rate, rating plan, and rating system made or used by it complies with the provisions of this part 4 applicable to it. The maintenance of such records in the office of a licensed rating organization of which an insurer is a member or subscriber will be sufficient compliance with this section for any insurer maintaining membership or subscribership in such organization to the extent that the insurer uses the rates, rating plans, rating systems, or underwriting rules of such organization. Such records shall be maintained in an office within this state or shall be made available for examination or inspection by the commissioner at any time, upon reasonable notice.

Section 10-3-1104, C.R.S., Unfair methods of competition and unfair or deceptive acts or practices states, in part:

- (1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance...
- (f)(II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates, charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

NCCI's Experience Rating Plan Manual states in part:

Part One – Page 1

I.A.6. Issuance of Modification

The experience modification for experience rated risks shall be calculated and issued by the appropriate rating organization listed in the Appendix.

The following chart illustrates the significance of errors versus the population and sample examined:

**WORKERS' COMPENSATION POLICIES WITH EXPERIENCE MODIFIERS
WRITTEN JANUARY 1, 2002 TO DECEMBER 31, 2002**

Population	Sample Size	Number of Exceptions	Percentage to Sample
151	50	6	12%

An examination of fifty (50) policies, representing 33% of all workers' compensation audited policies with experience modifiers, written by the Company during the period January 1, 2002 to December 31, 2002, showed six (6) exceptions (or 12% of the sample) in which the experience modification factor used was not the one promulgated by NCCI.

Recommendation #4

Within thirty (30) days, the Company should be required to provide documentation demonstrating why it should not be considered in violation of Sections 10-4-413 and 10-3-1104, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide written procedures to the Colorado Division of Insurance which will ensure that all Colorado workers' compensation policies will contain the experience modification factors promulgated by NCCI in compliance with Colorado insurance laws.

Issue E: Failure of the Company, in some cases, to apply the correct rating methodology when rating Colorado workers' compensation policies.

Section 10-4-401, C.R.S., Purpose – applicability, states, in part:

(3) The kinds of insurance subject to this part 4 shall be divided into two classes, as follows...

(b) Type II kinds of insurance, regulated by open competition between insurers, including fire, casualty, inland marine, title insurance, and all other kinds of insurance subject to this part 4 and not specified in paragraph (a) of this subsection (3), including the expense and profit components of workers' compensation insurance, which shall be subject to all the provisions of this part 4 except for sections 10-4-405 and 10-4-406. Concurrent with the effective date of new rates, type II insurers shall file rating data, as provided in section 10-4-403, with the commissioner.

Additionally, Section 10-3-1104, C.R.S., Unfair methods of competition and unfair or deceptive acts or practices, states, in part:

(1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance...

(f)(II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates, charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Regulation 5-1-10, Rate and Rule Submissions Property and Casualty Insurance, promulgated pursuant to the authority of Sections 10-1-109, 10-3-1110, 10-4-404, and 10-4-404.5, C.R.S., states, in part:

Section 5. Rules...

C. Rule Filing General Requirements...

2. Every property and casualty company, including those writing workers' compensation and title insurance, is required by this regulation to provide a list of minimum premiums, schedule of rates, rating plans, dividend plans, individual risk modification plans, deductible plans, rating classifications, territories, rating rules, rate manuals and every modification of any of the foregoing which it proposes to use. Such filings must state the proposed effective date thereof, and indicate the character and extent of the coverage contemplated.

The following charts illustrate the significance of errors versus the populations and samples examined:

**WORKERS' COMPENSATION POLICIES WITH EXPERIENCE MODIFIERS
WRITTEN JANUARY 1, 2002 TO DECEMBER 31, 2002**

Population	Sample Size	Number of Exceptions	Percentage to Sample
151	50	35	70%

An examination of fifty (50) audited policies with experience modifiers, representing 33% of all workers' compensation audited policies with experience modifiers, written by the Company during the period January 1, 2002 to December 31, 2002, showed thirty-five (35) exceptions (or 70% of the sample), and fifty-eight (58) instances, in which policies had been rated incorrectly. Twenty-two (22) policies contained incorrect designated medical provider credit amounts due to an error in programming the premium determination algorithm published by NCCI into the Company's computer system. The Company used December 1, 1999 loss costs instead of January 1, 2002 loss costs on fifteen (15) policies. Ten (10) policies contained classification errors. Three (3) policies had incorrect deductible credit factors applied. Two (2) policies had incorrect increased limits factors applied. Two (2) policies contained incorrect expense constant amounts. One (1) policy had the cost containment credit applied to all of the retirement homes covered and the credit was only applicable to one of the homes. It should also be noted that this Cost Containment Certificate had expired and a current Certificate was not provided. An incorrect loss cost had been applied to a classification on one (1) policy. One (1) policy had been given a 27.5% schedule credit inclusive of the designated medical provider and the total credit is limited to 25%. One (1) policy had the designated medical provider credit applied as a separate item on the audit billing and the credit had also been included in the schedule credit given which resulted in the insured being given credit twice.

**WORKERS' COMPENSATION POLICIES WITHOUT EXPERIENCE MODIFIERS
WRITTEN JANUARY 1, 2002 TO DECEMBER 31, 2002**

Population	Sample Size	Number of Exceptions	Percentage to Sample
37	37	16	43%

An examination of thirty-seven (37) audited policies without experience modifiers, representing 100% of all workers' compensation audited policies without experience modifiers, written by the Company during the period January 1, 2002 to December 31, 2002, showed sixteen (16) exceptions (or 43% of the sample) in which policies had been incorrectly rated. Nine (9) policies contained incorrect designated medical provider credit amounts due to an error in programming the premium determination algorithm published by NCCI into the Company's computer system. The Company used December 1, 1999 loss costs instead of January 1, 2002 loss costs on seven (7) policies.

On December 14, 2001, the Company made a filing with the Division of Insurance (DOI) to delay the adoption of NCCI's loss costs filed to be effective January 1, 2002 since, due the timing of the approval of the filing, it had not had adequate time to analyze the overall impact of the loss costs on its existing book of business. After requesting additional information from the Company, the DOI wrote to the Company on February 5, 2002, stating that the Company had filed in Colorado to allow NCCI to file loss

costs and other information of its behalf and, in the absence of credible information to the contrary, it was expected that the Company would adopt these loss costs as soon as they were approved for implementation in Colorado. The DOI also stated that the loss costs filed were based upon statewide and industrywide data which was more credible than any single company's projections and it was inappropriate to cite a lack of time to evaluate the impact of the loss costs upon a specific book of business. The Company was then instructed to promptly adopt the January 1, 2002 loss costs with an effective date no later than March 1, 2002. On February 6, 2002, the DOI amended its February 5, 2002 letter to the Company by explaining that NCCI had already modified the experience modification factor (EMF) formula based upon the January 1, 2002 loss costs filing and ELRs and policyholders were seeing a significant increase to their EMFs upon renewal. It was therefore expected that, even if the Company continued to choose to delay adoption of the loss costs to as late as the March 1, 2002 deadline, the Company was expected to apply the changes to the loss costs to all in-force policies which had renewed since January 1, 2002. Unless this was done, the Company's rates charged as a result of the average increase to the experience modification factor would be excessive as prohibited by Sections 10-4-401(1) and 10-4-403(2)(a)(I), C.R.S. On February 20, 2002, the Company withdrew its filing to delay the effective date of NCCI's loss costs filing to be effective January 1, 2002.

Twenty-two (22) policies in the two (2) samples shown above were found to be in error because they had been rated using the December 1, 1999 loss costs instead of the January 1, 2002 loss costs. Since the majority of the new loss costs were lowered, the DOI instructed the examiners to review the remaining one hundred one (101) policies written in 2002 for overcharges. In addition to using incorrect loss costs on some policies, the Company's computer program had NCCI's premium determination algorithm loaded incorrectly for a portion of the year and designated medical provider credits were incorrectly computed on some policies as a result. The one hundred one (101) remaining policies were also reviewed for errors in the designated medical provider credits, some of which resulted in overcharges and some in undercharges. Fifty-six (56) of the policies were found to contain overcharges due to one or both of these errors and the Company was given a comment form which listed these policies and instructed to re-rate the policies and refund the overcharges.

Recommendation #5

Within thirty (30) days, the Company should be required to provide documentation demonstrating why it should not be considered in violation of Sections 10-4-401 and 10-3-1104, C.R.S, and Colorado Regulation 5-1-10. If the Company is unable to provide such documentation, it should be required to provide written evidence to the Colorado Division of Insurance that it will apply correct rating methodology when writing Colorado workers' compensation policies in compliance with Colorado insurance laws.

Issue F: Failure of the Company, in some cases, to apply its required underwriting criteria to all Colorado workers' compensation policies.

Section 10-3-1104, C.R.S., Unfair methods of competition and unfair or deceptive acts or practices, states, in part:

(2) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance...

(f)(II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates, charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

A Company Underwriting Bulletin, dated November 28, 2000, states in part:

While our underwriting appetite should be clear by now, there are two elements that cannot be negotiable. In order to write a risk, new or renewal...they must have a designated medical provider. If they do not currently have one, they must be willing to accept one of several that we recommend.

The following charts illustrate the significance of errors versus the populations and samples examined:

**WORKERS' COMPENSATION POLICIES WITH EXPERIENCE MODIFIERS
WRITTEN JANUARY 1, 2002 TO DECEMBER 31, 2002**

Population	Sample Size	Number of Exceptions	Percentage to Sample
151	50	3	6%

An examination of fifty (50) audited policies with experience modifiers, representing 33% of all workers' compensation audited policies with experience modifiers, written by the Company during the period January 1, 2002 to December 31, 2002, showed three (3) exceptions (or 6% of the sample) in which insureds did not have a designated medical provider as required by the Company's underwriting criteria.

**WORKERS' COMPENSATION POLICIES WITHOUT EXPERIENCE MODIFIERS
WRITTEN JANUARY 1, 2002 TO DECEMBER 31, 2002**

Population	Sample Size	Number of Exceptions	Percentage to Sample
37	37	8	22%

An examination of thirty-seven (37) audited policies without experience modifiers, representing 100% of all workers' compensation audited policies without experience modifiers, written by the Company during

the period January 1, 2002 to December 31, 2002, showed eight (8) exceptions (or 22% of the sample) in which insureds did not have a designated medical provider as required by the Company's underwriting criteria.

Recommendation #6

Within thirty (30) days, the Company should be required to provide documentation demonstrating why it should not be considered in violation of Section 10-3-1104, C.R.S. If the Company is unable to provide such documentation, it should be required to provide written evidence to the Colorado Division of Insurance that it will apply its underwriting criteria to all Colorado insureds in compliance with Colorado insurance laws.

UNIT CARD STATISTICAL REPORTING
FINDINGS

Issue G: Failure of the Company, in some cases, to correctly report unit statistical card information to NCCI when writing Colorado workers' compensation policies.

Section 10-4-402, C.R.S., Definitions, states in part:

(3) "Rating organization" means every person, other than an admitted insurer, which has as its object or purpose the making of pure premium rates, rating plans, or rating systems...

Section 10-4-404, C.R.S., Rate administration, states in part:

(1) The commissioner shall promulgate rules and regulations which shall require each insurer to record and report its loss and expense experience and such other data, including reserves, as may be necessary to determine whether rates comply with the standards set forth in Section 10-4-403. Every insurer or rating organization shall provide such information and in such form as the commissioner may require. No insurer shall be required to record or report its loss or expense experience on a classification basis that is inconsistent with the rating system used by it. The commissioner may designate one or more rating organizations or advisory organizations to assist him in gathering and in compiling such experience and data. No insurer shall be required to record or report its experience to a rating organization unless it is a member of such organization.

The following charts illustrate the significance of errors versus the populations and samples examined:

**WORKERS' COMPENSATION POLICIES WITH EXPERIENCE MODIFIERS
WRITTEN JANUARY 1, 2002 TO DECEMBER 31, 2002**

Population	Sample Size	Number of Exceptions	Percentage to Sample
151	50	21	42%

An examination of fifty (50) audited policies with experience modifiers, representing 33% of all workers' compensation audited policies with experience modifiers, written by the Company during the period January 1, 2002 to December 31, 2002, showed twenty-one (21) exceptions (or 42% of the sample) in which the Company incorrectly reported policy information on the insured's unit statistical card. Eighteen (18) policies had different dollar amounts shown for schedule modifications and for designated medical provider credits than those shown on the audits. Two (2) unit statistical cards showed payroll and premium information different from that shown on the insureds' audits. One unit statistical card did not include a classification shown on the insured's audit.

**WORKERS' COMPENSATION POLICIES WITHOUT EXPERIENCE MODIFIERS
WRITTEN JANUARY 1, 2002 TO DECEMBER 31, 2002**

Population	Sample Size	Number of Exceptions	Percentage to Sample
37	37	18	49%

An examination of thirty-seven (37) audited policies without experience modifiers, representing 100% of all workers' compensation audited policies without experience modifiers, written by the Company during the period January 1, 2002 to December 31, 2002, showed eighteen (18) exceptions (or 49% of the

sample) in which the Company incorrectly reported policy information on the insured's unit statistical card. Seventeen (17) policies had different dollar amounts shown for schedule modifications and for designated medical provider credits than those shown on the audits. One (1) unit statistical card showed payroll and premium information different from that shown on the insured's audit.

Recommendation #7

Within thirty (30) days, the Company should be required to provide documentation demonstrating why it should not be considered in violation of Sections 10-4-404, C.R.S. If the Company is unable to provide such documentation, it should be required to provide written evidence to the Colorado Division of Insurance that it will correctly report unit statistical card information to NCCI in compliance with Colorado insurance laws.

SUMMARY OF RECOMMENDATIONS LOCATOR
EXAMINATION REPORT ON

AMERICAN COMPENSATION INSURANCE COMPANY

	ISSUE	RECOMMENDATION	PAGE #
A	Failure of the Company, in some cases, to maintain records required when writing Colorado workers' compensation policies.	1	16
B	Failure of the Company, in some cases, to require insured business entities to indicate on a form their awareness of the premium dividend available if their risk management program is certified by the Colorado Cost Containment Board and to make this form part of the insured business entities' underwriting files.	2	19
C	Failure of the Company, in some cases, to require each insured to indicate on a form their awareness of the premium differential available when an insured selects a designated medical provider and to retain this form in the insured's underwriting file.	3	21
D	Failure of the Company, in some cases, to use experience modification factors promulgated by NCCI when writing Colorado workers' compensation policies.	4	23
E	Failure of the Company, in some cases, to apply the correct rating methodology when rating Colorado workers' compensation policies.	5	26
F	Failure of the Company, in some cases, to apply its required underwriting criteria to all Colorado workers' compensation policies.	6	28
G	Failure of the Company, in some cases, to correctly report unit statistical card information to NCCI when writing Colorado workers compensation policies.	7	31

Independent Market Conduct Examiners
LUCILLE E. WHITTLE, CIE
&
K. C. LANG, AIE
participated in this examination and in the preparation of this report.